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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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10 IN RE: Bard IVC Filters Products
11 Liability Litigation

No. MDL 15-02641-PHX-DGC

12
13 Catriona Mhairi Duncanson,
14 Plaintiff,

No. CV-18-03082-PHX-DGC

15 v.

ORDER

16 C. R. Bard, Inc.; and Bard Peripheral
17 Vascular, Inc.,
18 Defendants.

19 The Court previously dismissed multiple cases from this MDL for lack of subject
20 matter jurisdiction. *See* Docs. 20667, 21461, 21759, 21741. The parties have filed an
21 updated status report identifying one additional case – *Duncanson v. C. R. Bard, Inc.*, No.
22 CV-18-03082 – for which no federal jurisdiction exists. Docs. 21995 at 2, 21995-3. For
23 reasons stated below, the Court will dismiss that case without prejudice.

24 Federal subject matter jurisdiction may be based on either federal question
25 jurisdiction or diversity jurisdiction. 28 U.S.C. §§ 1331, 1332. Courts “analyze federal
26 question jurisdiction with reference to the well-pleaded complaint rule.” *Yokeno v. Mafnas*,
27 973 F.2d 803, 807 (9th Cir. 1992). Under that rule, “federal jurisdiction exists only when
28 a federal question is presented on the face of a properly pleaded complaint.” *Scholastic*

1 *Entm't, Inc. v. Fox Entm't Grp., Inc.*, 336 F.3d 982, 986 (9th Cir. 2003). The complaint
 2 must establish either that “federal law creates the cause of action or that . . . the plaintiff’s
 3 right to relief necessarily depends on resolution of a substantial question of federal law.”
 4 *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold &*
 5 *Easement*, 524 F.3d 1090, 1102 (9th Cir. 2008) (quoting *Franchise Tax Bd. v. Constr.*
 6 *Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)).

7 The master complaint in this MDL asserts seventeen state law claims. Doc. 364
 8 ¶¶ 166-349. Because the complaint asserts no federal claim and Plaintiffs’ right to relief
 9 on the state law claims does not depend on resolution of a federal law question, the Court
 10 lacks subject matter jurisdiction under the federal question statute. *See* 28 U.S.C. § 1331;
 11 *Yokeno*, 973 F.2d at 809.

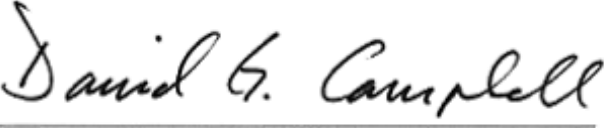
12 Subject matter jurisdiction must therefore be based on diversity of citizenship. *See*
 13 *Yokeno*, 973 F.2d at 809. District courts have diversity jurisdiction over cases between
 14 citizens of different states involving claims greater than \$75,000. 28 U.S.C. § 1332(a).
 15 Section 1332 requires complete diversity between the parties – that is, the citizenship of
 16 the plaintiff must be diverse from the citizenship of each defendant. *See Caterpillar, Inc.*
 17 *v. Lewis*, 519 U.S. 61, 68 (1996).

18 For purposes of diversity jurisdiction, Defendant C. R. Bard, Inc. is a citizen of New
 19 Jersey and Defendant Bard Peripheral Vascular, Inc. is a citizen of Arizona. *See* Doc. 364
 20 ¶¶ 11-12; *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) (noting
 21 that “a corporation is a citizen of any state where it is incorporated and of the state where
 22 it has its principal place of business”) (citing 28 U.S.C. § 1332(c)). Complete diversity
 23 does not exist, therefore, where the Plaintiff is a resident of either Arizona or New Jersey
 24 and has sued both C. R. Bard and Bard Peripheral Vascular. *See Williams v. United*
 25 *Airlines, Inc.*, 500 F.3d 1019, 1025 (9th Cir. 2007) (“Although diversity jurisdiction
 26 provides an independent basis for federal jurisdiction over state law claims, complete
 27 diversity is lacking in this case because both [plaintiff] and [defendant] are citizens of
 28 California.”).

1 The parties agree in their updated status report that diversity jurisdiction does
2 not exist in *Duncanson* because Plaintiff resides in New Jersey and has sued C. R. Bard,
3 a citizen of New Jersey. Docs. 21995 at 2, 21995-3; *see also* Doc. 1 ¶¶ 4-8, No. CV-
4 18-03082. A district court may dismiss a case for lack of subject matter jurisdiction at any
5 time during the pendency of the action. *See* Fed. R. Civ. P. 12(h)(3); *Snell v. Cleveland,*
6 *Inc.*, 316 F.3d 822, 826 (9th Cir. 2002) (noting that Rule 12(h)(3) permits a district court to
7 “raise the question of subject matter jurisdiction[] sua sponte”); *In re Phenylpropanolamine*
8 *(PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230-31 (9th Cir. 2006) (an MDL “transferee
9 judge exercises all the powers of a district judge in the transferee district under the Federal
10 Rules of Civil Procedure”). Because subject matter jurisdiction does not exist in
11 *Duncanson*, the case will be dismissed without prejudice.

12 **IT IS ORDERED** that *Duncanson v. C. R. Bard, Inc.*, No. CV-18-03082-PHX-
13 DGC, is **dismissed without prejudice**.

14 Dated this 6th day of April, 2021.

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17 David G. Campbell
18 Senior United States District Judge
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